

## **MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE**

Friday, September 5, 2008

A regular meeting of the Corporations Committee (the “Committee”) of the Business Law Section of the State Bar of California was held at the Los Angeles Airport Marriott in Los Angeles, California on Friday, September 5, 2008. Attendance was as follows:

### **MEMBERS PRESENT:**

W. Derrick Britt  
Richard Burt\*  
Christopher Delfino  
Edward A. Deibert  
Bruce Deming  
Bryan Gadol\*  
Steven Harmon\*  
David Hernand  
Barbara Mathews  
Mike Occhiolini\*  
Charles Ortmeyer  
Anne Marie Peters  
David Serepca\*  
Jennifer Sostrin  
James J. Thompson

### **MEMBERS ABSENT:**

Samuel C. Dibble  
Nelson Crandall  
Sharon R. Flanagan  
Michael I. Froch  
Jeffrey Hartlin  
Nina Hong  
Rose Sorensen  
Russ Wood

### **LIAISONS AND GUESTS PRESENT:**

Steve Hazen, Executive Committee  
Karol Pollack, SEC\*  
Keith Bishop

\*Via Telephone

The minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

## I. ADMINISTRATIVE MATTERS

1. Opening Remarks and announcements: The meeting was called to order by Co-Chairs B. Mathews and C. Delfino at 9:30 a.m. All members, liaisons and guests introduced themselves. Next meeting scheduled in Monterey on Friday, September 26.

2. Approval of Minutes: Minutes of August meeting approved, subject to minor comments.

## II. AGENCY AND LIAISON'S REPORTS

1. Securities and Exchange Commission: Ms. Pollack reported on auction rate securities and recent bank action. Among other matters, she noted the Senior Summit will be held in D.C. on September 22. She indicated that there will be a successor to the existing Edgar database called "Idea", to be used, in part, as an interactive tool for investors and otherwise.

2. Department of Corporations: No report.

3. Secretary of State: Mr. Vlaanderen reported. No update regarding business entity names. He noted that the special handling regulations and the related introduction of same day service will rolled out within two weeks. Requests for certificates of status alone (without the underlying business entity records) are being processed in one business day or less, in certain cases within 4-5 hours of such request. Requests for copies of entity records are being processed in 3-7 business days.

4. Office of Governmental Affairs: No report.

5. BLS Committee Liaison Reports:

A. ADR: Mr. Harmon reported. He indicated that the next meeting is scheduled on Friday, September 26. Working on a transition into the litigation section.

B. Cyberspace Law: Mr. Thompson reported. Cyberspace Committee has held two meetings since our last meeting. He noted the distinction between perfection in respect of registered vs. unregistered intellectual property. By way of example, in order to perfect a security interest in registered copyright collateral, the underlying security instrument would be filed with the U.S. Copyright Office which is distinguished from unregistered copyright collateral which would be perfected by filing a UCC-1 in the appropriate jurisdiction. He also covered a lottery and sweepstakes presentation.

C. Financial Institutions: Mr. Occhiolini reported on recent August 12 meeting.

D. Non-Profit Corporations: No report.

E. Partnerships and LLCs: No report.

F. UCC: Mr. Ortmeier reported on recent August 19 meeting. He indicated that the committee's hidden liens report is in near final form. Among other matters, he noted that there is discussion regarding compiling publication on taking a security interest in partnerships. He discussed that nationwide effort to address issues with Article 9, such as the proper identification of a debtor.

G. Agribusiness: No report.

H. Insolvency: Mr. Serepca reported that the Insolvency Committee did not meet in August and that their next scheduled meeting will occur during the State Bar Annual Meeting in Monterey.

I. Executive Committee: Mr. Hazen reported. The State Bar's leadership retreat will be held in October and solicited a maximum of officer volunteers from the Committee to attend the same. He reported on certain legislative matters involving other standing committees.

### III. SUBCOMMITTEE REPORTS

#### 1. Legislation: Mr. Britt reported.

A. AB 2944 Amendment to Section 309: Extensive discussion ensued concerning process in respect of bills submitted to the Governor. The Committee's Veto Request letter was approved by the legislative subcommittee and submitted to the OGA on September 2, 2008. Suggestion that an e-bulletin be prepared as to status and circulated after OGA approves the letter. Motion to prepare e-bulletin approved.

B. SB 1550 Climate Change Disclosure Standards: After being passed by Senate on May 22, 2008 and Assembly on August 13, 2008, as amended, the Senate refused to concur in amendments on August 31, 2008. Keith Bishop confirmed that the bill stands.

C. Potential ALP re: Householding: Revised ALP was approved at April 4, 2008 meeting. Approved by legislative subcommittee of Executive Committee on July 18, 2008. To be submitted to OGA by Steve Hazen.

D. Corporation Regulation Clean-up Comment Letter: Submitted to Department of Corporations on August 24, 2008.

E. SB 294 Subcommittee Report:

F. Name Change Comment Letter: Submitted to Department of Corporations on June 5, 2008.

G. Potential ALP re: 301.5 and 25219 Potential ALP re: 301.5 and 25219:  
Approved by legislative subcommittee of Executive Committee on July 18, 2008. To be  
submitted to OGA by Steve Hazen.

H. Proposed Rulemaking for Over the Counter Regs:

I. Legislation Update:

J. S.2956: Mr. Britt reported.

2. Communications/ Website: Mr. Deibert reported. Ms. Peters volunteered to  
assist.

A. Website Subcommittee:

B. E-Bulletin Topics:

(i) Business Entity Names:

(ii) Other Ideas:

3. Education/ Publications: No report.

A. Webinars:

(i) Comparison of Fiduciary Duties of For-Profit and Non-Profit  
Corporation Directors:

(ii) Corporation Directors: On hold.

(iii) Other Webinars:

B. Annual Meeting Program Topic – Update on Corporate Law  
Developments:

C. Other Program Topics:

D. BLN Article (due 9/30/08):

4. Corporate Law Departments Report: Mr. Ortmeier reported.

5. Litigation: Mr. Ortmeier reported on Western Filter Corp. v. Argan case  
involving clause concerning survival of representations and warranties post-closing. Mr.  
Hernand noted that an additional statement be included in these clauses which provides in part  
that such survival clause intended to replace or restate any applicable statute of limitations.

Chuck to further research issues and recommended that e-bulletin be prepared. Mr. Ortmeier also reported on People v. Cole and will follow-up accordingly.

IV. ONGOING PROJECTS:

1. Business Entity Name Issues: No report.

2. Privilege Issues: Mr. Hazen reported. Solely in his capacity as an alumni to the Committee, he recommended that the Committee submit short letter to Senator Feinstein concerning SB 3217, indicate that we have reviewed the same together with the managers amendments, and provide, in part, that the Committee strongly encourages Senator Feinstein to move forward with the bill. Motion approved to submit letter and delegate authority to drafting committee and handle all matters incident to the same, comprised of Mr. Britt and Mr. Delfino, under supervision of Mr. Hazen.

A. ABA Task Force on Attorney-Client Privilege:

B. Proposed Change to FAS 5:

C. S. 3217:

D. Office of Rural Legal Assistance: Mr. Deibert reported that there was a hearing held during the past two weeks before U.S. District Court judge in D.C. Mr. Hazen inquired as to whether there was a transcript of such meeting.

3, Venture Capital Opinion Report: Ms. Peters reported. Discussion ensued concerning subcommittee's mark-up of Report on Selected Legal Opinion Issues in Venture Capital Financing Transactions. Committee to review mark-up in anticipation of more detailed discussion at next meeting.

V. NEW BUSINESS:

Respectfully Submitted,

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J. Sostrin, Secretary